

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(3112 Mt. Zion Road)		
5 th Election District	*	OF ADMINISTRATIVE
2 nd Council District		
Vernon J. Chilcote & Jane L. Goldstrom	*	HEARINGS FOR
<i>Legal Owners</i>		
Petitioners	*	BALTIMORE COUNTY
	*	CASE NO. 2020-0050-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by Vernon J. Chilcote and Jane L. Goldstrom, legal owners of the subject property (“Petitioners”). Petitioners are requesting variance relief from § 400.1 of the Baltimore County Zoning Regulations (“BCZR”) to allow an accessory structure (solar array) to be located in the front yard of a 8.195 acre corner property in lieu of the third area of the rear yard not furthest removed from any street. A site plan was marked as Petitioners’ Exhibit 1.

Due to COVID-19 pandemic, a WebEx hearing was conducted remotely by computer and/or phone participation. Vernon Chilcote & Jane Goldstrom along with Bruce Doak, surveyor appeared in support of the petition. A number of community protestants were present at the hearing, and their names are listed on the sign-in sheet. The Petition was advertised and posted as required by the BCZR. A substantive Zoning Advisory Committee (“ZAC”) comment was received from the Department of Planning (“DOP”). That agency does not support the request.

It should be noted that upon review of the file, it is noted that there is a comment from the Director of the Department of Planning (“DOP”) opposing the granting of the variance. It notes that the side of the property along Falls Road is a state designated scenic highway and Baltimore County Master Plan 2020 designated Scenic Route. The comment states:

“The Comprehensive Manual of Development Policies (‘CMDP’), Division VI, Section A, focuses on development adjacent to scenic routes. The view from Falls Road is an enclosed view from the southbound lane. Falls Road is at a lower elevation than the property. The view focuses on the side and rear of the house. The proposed solar panels are to be located on the Falls Road side of the house in the view shed. Page 178 of the CMDP, Development Guidelines #5 states: ‘Design and locate utilities, drainage structures, bridges, lighting, signage, fences, walls, and street furniture to harmonize with the surroundings and to create the least visual impact.’

The Department of Planning does not support the request. According to the submitted plan, the elevation and slope of the property is approximately the same in the third of the lot furthest from the road, as it is at the plan location. The approval of the proposed location goes against the CMDP, as the utility is located in an area that creates a visual impact from Falls Road. For this reason, the department opposes the request.”

Testimony was presented by Mr. Doak that the subject site is, in fact, 8.195 acres, is zoned RC 2, and is bordered on the east by Falls Road and on the south by Mt. Zion Road. The property is improved by a single-family home. He noted the location of the property septic system to the north of the residence. He stated that the Petitioner wishes to construct a 15 ft. x 30 ft. solar array on the Falls Road side of the property (as noted on Petitioner’s Exhibit 1), as opposed to placing it on the roof of the residence. He further noted that the height of the proposed array could be up to 11 ft.

Mr. Doak described the site’s topography, stating that the first one third of the site is flat and that the remainder slopes into the back and corner of the site. He stated that the reason for the variance request was that, absent the variance, the panels would be required to be placed in the one third of the property farthest from the road, but that with two bordering roads, Petitioner is unable to place it where he wishes. He offered further that the swale of the remainder of the property also mitigates against the sighting of the panels. He stated that the Petitioner wished to place the panels where he believed they would least be seen. In addition, he related that since the

property is zoned RC 2, the Petitioner wished in the future to subdivide the site to create another residential lot.

He addressed the opposition of the DOP to the requested variance set out in their comment of April 2, 2020. He opined that the guidelines mentioned exist more to enhance residential use and growth, and less to be applied to rural areas. He stated that although he spoke with the Department to address their concerns, “they declined to amend in any way their opposing comment”.

Petitioner Chilcote briefly testified, adopting Mr. Doak’s presentation. He stated that the goal of the variance was to hide the panels from view from other properties and the adjacent roads.

A number of protestants testified. Protestant Herschman was concerned about the second lot and opined that the proposed site for the panels could be seen from their living room. Protestant Tate noted that he has solar panels on his roof. He stated that the County won’t even let speed signs to be placed on Mt. Zion Road and is also concerned about the rationale for the variance being a future subdivision of the property. Protestant Laiken notes that the scenic highways on both sides are very idyllic, that she is also for green energy and has put solar panels on her roof. Protestant Greene wishes to maintain the scenic character of the area, and notes that the proposed site could be clearly seen from the road. Protestant Hawks objects to many of the same issues as raised by the others and is also concerned as to the aesthetics of the ground-based array. Protestant Meerdter adopts the objections of her neighbors and is also particularly concerned that the only reason for the variance request is to enable the subdivision of the site in the future. Protestant Sandler agrees with the objections raised by his neighbors and also points out that the granting of the variance would be a destabilizing precedent for future zoning requests

in the area. Protestants Bossow, Laiken and Dereamer also noted in testimony their support and agreement with the objections raised by their neighbors.

The Petitioner's request fails for a number of reasons. First, this is a rural area whose topography is shared by all of the neighboring sites. After a review of the aerial photographs and maps, I find that the Petitioner has not established any specific uniqueness of the site. It is bordered on two sides by roads, but so are other properties in the area.

Although I could conclude at this point, I believe that addressing the other factors in the granting of a variance is appropriate. Even assuming arguendo that the property was unique, there is no practical difficulty inherent in the site that would prevent the Petitioner from placing the solar panels on a portion of his property that would be permitted under the zoning regulations. In addition, if the variance is not granted, Petitioner could place the panels on the roof of his residence, as many of his neighbors have already done.

Finally, I disagree with Mr. Doak regarding his view of the Baltimore County Master Plan 2020 and the CMDP as it relates to this variance. Much of Maryland is rural, as is major parts of Baltimore County. The protection of those areas is an important part of these regulations. I agree with the comments of the DOP and therefore find that the requested variance could not be granted in harmony with the spirit and intent of the BCZR, and in such manner as to grant relief without injury to the public health, safety and, in this manner, the general welfare.

THEREFORE, IT IS ORDERED, this 2nd day of **September, 2020**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance from the BCZR pursuant to § 400.1 to allow an accessory structure (solar array) to be located in the front yard of a 8.195 acre corner property in lieu of the third area of the rear yard not furthest removed from any street, be and is hereby DENIED.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

Signed _____
LAWRENCE M. STAHL
Administrative Law Judge
for Baltimore County

LMS/dlw